

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

SHANE G. ASCH,	:	APPEAL NO. C-080345
	:	TRIAL NO. DR0002542
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
RACHELLE S. ASCH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Defendant-appellant Rachelle S. Asch challenges from the entry of the Hamilton County domestic relations court denying her motion to continue a hearing on plaintiff-appellee Shane G. Asch’s request to terminate a shared-parenting agreement and to award custody of their six-year-old child, Jordan, to Shane.

The parties divorced in 2003. Relations between the parties remained acrimonious. In February 2007, Shane moved to obtain permanent custody of their child. The case was first set for trial on Shane’s motion on January 9, 2008. On that day, the trial court journalized an entry granting a continuance until March 26, 2008. The next day, Rachelle’s counsel requested and was granted permission to withdraw from her representation. Two weeks later, the trial court rescheduled the case for “CUSTODY, TRIAL” at 8:30 a.m., on Monday, March 31, 2008.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

At 3:04 p.m., on the Friday before the trial, Rachelle filed a request for service of a motion on Shane. The request did not identify the subject of the motion. Presumably it was the motion to dismiss or to continue the trial, the resolution of which is the subject of this appeal. Oddly, the record reflects that the motion itself was filed on Monday, March 31 at 8:16 a.m.

By Monday morning, the trial court clearly had possession of Rachelle's motion. After waiting until 9:50 a.m., the trial court began the trial and noted, "[Rachelle] has not appeared. The case was set for trial 8:30 this morning. She has filed a motion for a dismissal of the trial and a motion for continuance. And I said at the last hearing the case would go forward today. [Shane] is present [and] has subpoenaed various witnesses ready to go forward." The trial court denied Rachelle's motion for a continuance, held a trial, heard the testimony of seven witnesses, including a court-appointed parenting specialist and a Child Protective Services investigator, terminated the shared-parenting plan, and granted custody of Jordan to Shane.

In her sole assignment of error, Rachelle contends that the trial court erred when it failed to grant her pro se motion to continue the hearing date. The grant or denial of a motion for a continuance is "entrusted to the broad, sound discretion" of the trial court and will not be reversed absent an abuse of discretion.² The term abuse of discretion means more than a mere error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary, or unconscionable.³ If a court's exercise of its discretion exhibits a sound reasoning process, this court will not substitute its judgment for that of the trial court and overturn its decision.⁴

² *State v. Unger* (1981), 67 Ohio St.2d 65, 67, 423 N.E.2d 1078; see, also, *State v. Broom* (1988), 40 Ohio St.3d 277, 288, 533 N.E.2d 682, 695.

³ See *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144; see, also, *Young v. Young* (May 1, 1998), 1st Dist. No. C-970203.

⁴ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

In deciding whether to grant a motion for a continuance, the trial court is to consider various factors including the length of the delay requested, whether other continuances have been requested and granted, the inconvenience to the litigants, witnesses, counsel and the court, whether the requested continuance is for legitimate purposes, whether the requesting party has contributed to the circumstance giving rise to the requested continuance, and any other relevant factors.⁵ The trial court should weigh any potential prejudice to the moving party against the “court’s right to control its own docket and the public’s interest in the prompt and efficient dispatch of judgment.”⁶

We note that Rachelle had not obtained replacement counsel and that pro se civil litigants are bound by the same rules and procedures as those litigants who retain counsel.⁷ Here, Rachelle sought a continuance, citing the inconvenience and the high cost of appearing in court. The trial had been delayed over 60 days. The trial court had granted previous continuances and had indicated its reluctance to grant an additional one. And witnesses were waiting to testify. We cannot say that the trial court abused its discretion by denying Rachelle’s request for another continuance. Accordingly, the assignment of error is overruled.

Therefore, the trial court’s judgment is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 10, 2009
per order of the Court _____.

Presiding Judge

⁵ See *State v. Unger*, 67 Ohio St.2d at 67-68, 423 N.E.2d 1078.

⁶ Id. at 67, 423 N.E.2d 1078.

⁷ See *Dawson v. Pauline Homes, Inc.* (1958), 107 Ohio App. 90, 154 N.E.2d 164; see, also, *Meyers v. First Natl. Bank of Cincinnati* (1981), 3 Ohio App.3d 209, 210, 444 N.E.2d 412.